at any time, and if D. paid the defendant the amount of the purchase price and interest before the expiration of one year, defendant agreed to sell the property to him. This lease was executed November 12, 1900. On October 12, 1901, the plaintiff, as sheriff, levied on this property to satisfy judgments against D. The defendant removed the property, claiming it under the bill of sale: the sheriff brings suit for conversion. *Held,* the bill of sale and the lease together constituted a chattel mortgage, which not being filed, was void as against D.'s creditors. (WILLARD BARTLETT, J., dissenting, on the ground that there was a question for the jury.) *Dickinson* v. *Oliver,* (1909), 195 N. Y. 238, 88 N. E. 44.

The court, after disposing of a preliminary question regarding the right of the plaintiff to sue as sheriff, affirms the rule laid down in the lower court that the two instruments although executed at different times constitute a chattel mortgage as a matter of law. 96 App. Div. 65, 89 N. Y. Supp. 52. The defeasance clause in the lease, being an essential charcteristic of a mortgage, makes it "as clearly a mortgage as if the defeasance formed a part of the bill of sale." *Mooney* v. *Byrne,* 163 N. Y. 86, 92, 57 N. E. 163; *Brown* v. *Bement,* 8 Johns. 96; JONES, CHATTEL MORTGAGES, § 19. A lease entitles the lessee to possession for the period of the lease, but in this case the defendant was to have the right to remove the property at any time—a clause usual to a chattel mortgage but foreign to a lease. The payment of an insignificant sum to D. in addition to the sum due, as an added consideration in the bill of sale, was disregarded; and calling this consideration the "purchase price" does not make it any more a bill of sale. *Susman* v. *Whyard,* 149 N. Y. 127. To construe the instrument as a bill of sale would permit an evasion of the law requiring a filing of chattel mortgages, and would open the door to fraud as against creditors. *Tooker* v. *Siegel-Cooper Co.,* 194 N. Y. 442, 448, 87 N. E. 773.

CONSTITUTIONAL LAW—EMPLOYER'S LIABILITY ACT—RIGHT TO SUE IN STATE COURT.—This was an action for damages brought by a brakeman under the Employers' Liability Act, (Act of Congress approved Apr. 22nd, 1908, 35 Stat. 65, C. 149.) for injuries received while coupling an interstate train, due to the negligence of a fellow-servant, in control of another train of the same railroad. *Held,* (1) Congress did not intend by Act of Congress of April 22, 1908, to authorize the institution of an action under it in the state courts. (2) It has no power to compel the state courts to assume jurisdiction of such an action. (3) The act, as far as this cause is concerned is wholly void, by virtue of certain provisions which cannot be separated from the rest. *Hoxie* v. *New York, N. H. & H. R. Ry. Co.* (1909), — Conn. —, 73 Atl. 754.

The Employers' Liability Act has called forth much recent discussion. (1) It is the better opinion that the Constitution was intended to confine to the courts created by Congress the hearing and determination of causes falling within the grant of federal judicial power. *Robertson* v. *Baldwin,* 165 U. S. 275, 17 Sup Ct. 326, 41 L. Ed. 715. The question as to whether the state by appropriate legislation might not accept for its courts the jurisdiction of such matters is not discussed, but undoubtedly the state could grant the

right to sue in such cases in its courts by appropriate legislation. *Ex Parte Knowles,* 5 Cal. 301. (2) No part of the judicial power of the United States can be vested by Congress in other courts than those of its own creation. *Martin* v. *Hunter's Lessee,* 1 Wheat, 304, 4 L. Ed. 97. Affirmed in *Houston* v. *Moore,* 5 Wheat 1, 5 L. Ed. 19. Congress cannot confer jurisdiction upon the state courts but these courts may exercise jurisdiction in cases authorized by the law of the state and not exclusively reserved to the Federal Courts by Congress. *Claflin* v. *Houseman,* 93 U. S. 130, 23 L. Ed. 833; *Carpenter* v. *Snelling,* 97 Mass. 452. If state courts can accept jurisdiction of statutory enactments of Congress, when not prohibited by State Statutes, they can also refuse to accept jurisdiction. *Ely* v. *Peck,* 7 Conn. 239. (3) The Act of 1908 is held unconstitutional, practically on the same grounds as the Act of 1906, viz:—First: Congress exceeded its powers in legislating upon the relation of master and servant. *Baltimore & O. R. R. Co.* v. *Baugh,* 149 U. S. 368, 13 Sup. Ct. 914, 37 L. Ed. 772. Second: That the act so connected interstate and intrastate commerce as to render them inseparable. *Employers' Liability Cases,* 207 U. S. 463, 23 Sup. Ct. 141, 52 L. Ed. 297. The provisions of § 5, of the act as to contracts, exempting employer from liability are void as against the fifth amendment to the constitution of the United States, as depriving one of property without due process of law, as defined in *Adair* v. *U. S.,* 208 U. S. 161, 52 L. Ed. 436. Contra, *Watson* v. *St. Louis, I. M. & S. R. R. Co.,* 169 Fed. 942, holding Act of Congress Apr. 22, 1908, to be constitutional.

CONSTITUTIONAL LAW—POLICE POWER—TRADE MARKS—REUSE OF ORIGINAL PACKAGES.—New York Pen. Code, § 364, makes it a midemeanor to knowingly sell any goods represented in any manner to be the manufacture or product of any person other than the seller, unless they be sold in the original package, and under the trademark, label, etc., put there by the manufacturer. Defendant, a barkeeper, repeatedly refilled a bottle from a demijohn kept beneath the counter after the original contents placed in said bottle by the Wilson Distilling Company had been disposed of, and sold the whisky thus substituted as that originally bottled by the Wilson Company, knowing at all times that such was not the case. *Held* to be a violation of the act, whether the whisky was Wilson whisky or not. *People* v. *Luhrs* (1909), — N. Y. —, 89 N. E. 171.

The enactment of statutes to prevent fraud is a proper exercise of the police power accorded by the state and the United States constitutions, is a reasonable interference with the enjoyment of property, in order to promote the general welfare, and is not unconstitutional, as a deprivation of property without due process of law. *Farmville* v. *Walker,* 101 Va. 323, 43 S. E. 558, 61 L. R. A. 125, 99 Am. St. Rep. 870; *Danville* v. *Hatcher,* 101 Va. 523, 44 S. E. 723; *Commonwelath* v. *Henry,* — Va. —, 65 S. E. 570; *Campbell* v. *City of Thomasville,* — Ga. —, 64 S. E. 815; *Mugler* v. *Kansas,* 123 U. S. 623, 8 Sup. Ct. 273, 31 L. Ed. 205.

DEEDS—DATE—PRESUMPTION AS TO TIME OF DELIVERY.—Bill to recover possession of a tract of land. Complainant claimed title through a grant